



IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

| | | |
|----------------------------|---|-----------|
| STATE OF ALABAMA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CV-05-219 |
| |) | |
| ABBOTT LABORATORIES, INC., |) | |
| et al., |) | |
| |) | |
| Defendants. |) | |

**ANSWER OF PAR PHARMACEUTICAL, INC.
TO THE SECOND AMENDED COMPLAINT**

Defendant Par Pharmaceutical, Inc. ("Par") hereby answers the Second Amended Complaint as follows:

INTRODUCTION

1. Par denies the allegations in Paragraph 1 as they relate to Par. Par is not required to respond to the allegations in Paragraph 1 that relate to other defendants.
2. Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 2, and on that basis denies them.
3. Par admits that the State of Alabama purports to bring this action, by and through its Attorney General, and further purports to seek legal and equitable relief. Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 3, except that Par denies that it has engaged in fraudulent and wanton conduct, perpetrated a "drug-pricing scheme," or committed improper and unlawful actions. Par is not required to respond to the allegations in Paragraph 3 as they relate to other defendants.

4. Par admits that Plaintiff purports to seek legal and equitable redress, but denies that Plaintiff is entitled to any redress, legal or equitable, in connection with this lawsuit. Par denies the remaining allegations in Paragraph 4 as they relate to Par. Par is not required to respond to the allegations in Paragraph 4 that relate to other defendants.

PARTIES

5. Par admits that the State of Alabama purports to bring this action in its capacity as sovereign and on behalf of the Alabama Medicaid Agency, and otherwise denies the allegations in this paragraph.

6. Paragraph 6 states legal conclusions to which a response is not required.

7. Paragraph 7 does not require a response from Par because its allegations relate exclusively to other defendants.

8. Paragraph 8 does not require a response from Par because its allegations relate exclusively to other defendants.

9. Paragraph 9 does not require a response from Par because its allegations relate exclusively to other defendants.

10. Paragraph 10 does not require a response from Par because its allegations relate exclusively to other defendants.

11. Paragraph 11 does not require a response from Par because its allegations relate exclusively to other defendants.

12. Paragraph 12 does not require a response from Par because its allegations relate exclusively to other defendants.

13. Paragraph 13 does not require a response from Par because its allegations relate exclusively to other defendants.

14. Paragraph 14 does not require a response from Par because its allegations relate exclusively to other defendants.

15. Paragraph 15 does not require a response from Par because its allegations relate exclusively to other defendants.

16. Paragraph 16 does not require a response from Par because its allegations relate exclusively to other defendants.

17. Paragraph 17 does not require a response from Par because its allegations relate exclusively to other defendants.

18. Paragraph 18 does not require a response from Par because its allegations relate exclusively to other defendants.

19. Paragraph 19 does not require a response from Par because its allegations relate exclusively to other defendants.

20. Paragraph 20 does not require a response from Par because its allegations relate exclusively to other defendants.

21. Paragraph 21 does not require a response from Par because its allegations relate exclusively to other defendants.

22. Paragraph 22 does not require a response from Par because its allegations relate exclusively to other defendants.

23. Paragraph 23 does not require a response from Par because its allegations relate exclusively to other defendants.

24. Paragraph 24 does not require a response from Par because its allegations relate exclusively to other defendants.

25. Paragraph 25 does not require a response from Par because its allegations relate exclusively to other defendants.

26. Paragraph 26 does not require a response from Par because its allegations relate exclusively to other defendants.

27. Paragraph 27 does not require a response from Par because its allegations relate exclusively to other defendants.

28. Paragraph 28 does not require a response from Par because its allegations relate exclusively to other defendants.

29. Paragraph 29 does not require a response from Par because its allegations relate exclusively to other defendants.

30. Paragraph 30 does not require a response from Par because its allegations relate exclusively to other defendants.

31. Paragraph 31 does not require a response from Par because its allegations relate exclusively to other defendants.

32. Paragraph 32 does not require a response from Par because its allegations relate exclusively to other defendants.

33. Paragraph 33 does not require a response from Par because its allegations relate exclusively to other defendants.

34. Paragraph 34 does not require a response from Par because its allegations relate exclusively to other defendants.

35. Paragraph 35 does not require a response from Par because its allegations relate exclusively to other defendants.

36. Paragraph 36 does not require a response from Par because its allegations relate exclusively to other defendants.

37. Paragraph 37 does not require a response from Par because its allegations relate exclusively to other defendants.

38. Paragraph 38 does not require a response from Par because its allegations relate exclusively to other defendants.

39. Paragraph 39 does not require a response from Par because its allegations relate exclusively to other defendants.

40. Paragraph 40 does not require a response from Par because its allegations relate exclusively to other defendants.

41. Paragraph 41 does not require a response from Par because its allegations relate exclusively to other defendants.

42. Paragraph 42 does not require a response from Par because its allegations relate exclusively to other defendants.

43. Paragraph 43 does not require a response from Par because its allegations relate exclusively to other defendants.

44. Paragraph 44 does not require a response from Par because its allegations relate exclusively to other defendants.

45. Paragraph 45 does not require a response from Par because its allegations relate exclusively to other defendants.

46. Paragraph 46 does not require a response from Par because its allegations relate exclusively to other defendants.

47. Paragraph 47 does not require a response from Par because its allegations relate exclusively to other defendants.

48. Paragraph 48 does not require a response from Par because its allegations relate exclusively to other defendants.

49. Paragraph 49 does not require a response from Par because its allegations relate exclusively to other defendants.

50. Paragraph 50 does not require a response from Par because its allegations relate exclusively to other defendants.

51. Paragraph 51 does not require a response from Par because its allegations relate exclusively to other defendants.

52. Paragraph 52 does not require a response from Par because its allegations relate exclusively to other defendants.

53. Paragraph 53 does not require a response from Par because its allegations relate exclusively to other defendants.

54. Paragraph 54 does not require a response from Par because its allegations relate exclusively to other defendants.

55. Paragraph 55 does not require a response from Par because its allegations relate exclusively to other defendants.

56. Paragraph 56 does not require a response from Par because its allegations relate exclusively to other defendants.

57. Paragraph 57 does not require a response from Par because its allegations relate exclusively to other defendants.

58. Paragraph 58 does not require a response from Par because its allegations relate exclusively to other defendants.

59. Paragraph 59 does not require a response from Par because its allegations relate exclusively to other defendants.

60. Paragraph 60 does not require a response from Par because its allegations relate exclusively to other defendants.

61. Paragraph 61 does not require a response from Par because its allegations relate exclusively to other defendants.

62. Paragraph 62 does not require a response from Par because its allegations relate exclusively to other defendants.

63. Paragraph 63 does not require a response from Par because its allegations relate exclusively to other defendants.

64. Paragraph 64 does not require a response from Par because its allegations relate exclusively to other defendants.

65. Paragraph 65 does not require a response from Par because its allegations relate exclusively to other defendants.

66. Paragraph 66 does not require a response from Par because its allegations relate exclusively to other defendants.

67. Paragraph 67 does not require a response from Par because its allegations relate exclusively to other defendants.

68. Paragraph 68 does not require a response from Par because its allegations relate exclusively to other defendants.

69. Paragraph 69 does not require a response from Par because its allegations relate exclusively to other defendants.

70. Paragraph 70 does not require a response from Par because its allegations relate exclusively to other defendants.

71. Par denies that it is a New Jersey corporation, but admits that its principal place of business is located at One Ram Ridge Road, Spring Valley, NY 10977. Par further admits that it manufactures, distributes, markets and/or sells prescription drugs that are reimbursed by state Medicaid agencies and that it manufactured, distributed, marketed and/or sold the drugs identified as Par drugs in Exhibit A to the Second Amended Complaint.

72. Paragraph 72 does not require a response from Par because its allegations relate exclusively to other defendants.

73. Paragraph 73 does not require a response from Par because its allegations relate exclusively to other defendants.

74. Paragraph 74 does not require a response from Par because its allegations relate exclusively to other defendants.

75. Paragraph 75 does not require a response from Par because its allegations relate exclusively to other defendants.

76. Paragraph 76 does not require a response from Par because its allegations relate exclusively to other defendants.

77. Paragraph 77 does not require a response from Par because its allegations relate exclusively to other defendants.

78. Paragraph 78 does not require a response from Par because its allegations relate exclusively to other defendants.

79. Paragraph 79 does not require a response from Par because its allegations relate exclusively to other defendants.

80. Paragraph 80 does not require a response from Par because its allegations relate exclusively to other defendants.

81. Paragraph 81 does not require a response from Par because its allegations relate exclusively to other defendants.

82. Paragraph 82 does not require a response from Par because its allegations relate exclusively to other defendants.

83. Paragraph 83 does not require a response from Par because its allegations relate exclusively to other defendants.

84. Paragraph 84 does not require a response from Par because its allegations relate exclusively to other defendants.

85. Paragraph 85 does not require a response from Par because its allegations relate exclusively to other defendants.

86. Paragraph 86 does not require a response from Par because its allegations relate exclusively to other defendants.

87. Paragraph 87 does not require a response from Par because its allegations relate exclusively to other defendants.

88. Paragraph 88 does not require a response from Par because its allegations relate exclusively to other defendants.

89. Paragraph 89 does not require a response from Par because its allegations relate exclusively to other defendants.

90. Paragraph 90 does not require a response from Par because its allegations relate exclusively to other defendants.

91. Paragraph 91 does not require a response from Par because its allegations relate exclusively to other defendants.

92. Paragraph 92 does not require a response from Par because its allegations relate exclusively to other defendants.

93. Paragraph 93 does not require a response from Par because its allegations relate exclusively to other defendants.

94. Par denies the allegations in Paragraph 94 as they relate to Par. Par is not required to respond to the allegations in Paragraph 94 that relate to other defendants. Par otherwise is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 94, and on that basis denies them.

JURISDICTION AND VENUE

95. Par admits that this Court has jurisdiction, but denies that Plaintiff's claims arise exclusively under Alabama law.

96. Par admits that this Court has jurisdiction over Par. Par is not required to respond to the allegations in Paragraph 96 that relate to other defendants.

97. Par admits that venue is proper in Montgomery County. Par is otherwise without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 97, and on that basis denies them.

FACTUAL BACKGROUND

98. Par admits that the Alabama Medicaid Program is a state-administered program with federal matching funds which pays for medical care, including prescription drug benefits,

for certain Alabama citizens. Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 98, and on that basis denies them.

99. Par admits that Alabama Medicaid reimburses medical providers for certain drugs dispensed to Alabama Medicaid recipients. Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 99, and on that basis denies them.

100. Par admits that it was at all times aware that Alabama Medicaid reimbursed providers for certain pharmacy-dispensed prescription drugs. Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 100 concerning the exact basis on which Alabama reimburses for pharmacy-dispensed prescription drugs, and on that basis denies them. Par denies the remaining allegations in Paragraph 100 as they relate to Par. Par is not required to respond to the allegations in Paragraph 100 that relate to other defendants.

101. Admitted.

102. Par states that the applicable Medicare statutes and regulations speak for themselves. Par states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 102 concerning the exact basis on which Alabama reimburses for Part B drugs, and on that basis denies them. Par denies the remaining allegations in Paragraph 102 as they relate to Par. Par is not required to respond to the allegations in Paragraph 102 that relate to other defendants.

103. Par denies the allegations in the first sentence of Paragraph 103 as they relate to Par. Par is without knowledge or information sufficient to form a belief as to the truth or falsity

of the allegations in the second sentence of Paragraph 103, and on that basis denies them. Par is not required to respond to the allegations in Paragraph 103 that relate to other defendants.

104. Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 104, and on that basis denies them.

105. Par denies the allegations in Paragraph 105 as they relate to Par. Par is not required to respond to the allegations in Paragraph 105 that relate to other defendants.

106. Par denies the allegations in Paragraph 106 as they relate to Par, except that Par admits that it reports to one or more industry reporting services the AWP for particular products. Par is not required to respond to the allegations in Paragraph 106 that relate to other defendants.

107. Par denies the allegations in Paragraph 107 as they relate to Par. Par is not required to respond to the allegations in Paragraph 107 that relate to other defendants.

108. Par denies the allegations in Paragraph 108 as they relate to Par. Par is not required to respond to the allegations in Paragraph 108 that relate to other defendants.

109. Par denies the allegations in Paragraph 109 as they relate to Par. Par is not required to respond to the allegations in Paragraph 109 that relate to other defendants.

110. Par denies the allegations in Paragraph 110 as they relate to Par. Par is not required to respond to the allegations in Paragraph 110 that relate to other defendants.

111. Par denies the allegations in Paragraph 111 as they relate to Par. Par is not required to respond to the allegations in Paragraph 111 that relate to other defendants.

112. Par denies the allegations in Paragraph 112 as they relate to Par, except that Par admits that it has been sued in some other jurisdictions based on allegations relating to drug pricing. Par is not required to respond to the allegations in Paragraph 112 that relate to other defendants.

113. Par states that the complaint brought by New York City speaks for itself. Par otherwise denies the allegations in Paragraph 113 as they relate to Par. Par is not required to respond to the allegations in Paragraph 113 that relate to other defendants.

114. Par is not required to respond to the allegations in Paragraph 114 as they relate exclusively to other defendants. To the extent a response is required, Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 114, and on that basis denies them.

115. Par is not required to respond to the allegations in Paragraph 115 as they relate exclusively to other defendants. To the extent a response is required, Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 115, and on that basis denies them.

116. Par is not required to respond to the allegations in Paragraph 116 as they relate exclusively to other defendants. To the extent a response is required, Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 116, and on that basis denies them.

117. Par is not required to respond to the allegations in Paragraph 117 as they relate exclusively to other defendants. To the extent a response is required, Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 117, and on that basis denies them.

118. Par is not required to respond to the allegations in Paragraph 118 as they relate exclusively to other defendants. To the extent a response is required, Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 118, and on that basis denies them.

119. Par is not required to respond to the allegations in Paragraph 119 as they relate exclusively to other defendants. To the extent a response is required, Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 119, and on that basis denies them.

120. Par is not required to respond to the allegations in Paragraph 120 as they relate exclusively to other defendants. To the extent a response is required, Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 120, and on that basis denies them.

121. Par is not required to respond to the allegations in Paragraph 121 as they relate exclusively to other defendants. To the extent a response is required, Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 121, and on that basis denies them.

122. If and to the extent the allegations in Paragraph 122 relate to Par, Par denies them. Par is not required to respond to the allegations in Paragraph 122 as they relate exclusively to other defendants. To the extent a response is required as to any other allegations in Paragraph 122, Par is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 122, and on that basis denies them.

123. Par admits that it is aware of the AWP's published by industry reporting services for its competitors' products. Par denies the remaining allegations in Paragraph 123 as they relate to Par. Par is not required to respond to the allegations in Paragraph 123 that relate to other defendants.

124. Par denies the allegations in Paragraph 124 as they relate to Par. Par is not required to respond to the allegations in Paragraph 124 that relate to other defendants. Par

otherwise is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 124, and on that basis denies them.

125. Paragraph 125 is argumentative and does not require a response. To the extent a response is required, Par denies the allegations in Paragraph 125 as they relate to Par.

126. Paragraph 126 is argumentative and does not require a response. To the extent a response is required, Par denies the allegations in Paragraph 126 as they relate to Par.

CLAIMS

COUNT ONE – FRAUDULENT MISREPRESENTATION

127. Par's responses to Paragraphs 1-126 are fully incorporated herein by reference.

128. Par denies the allegations in Paragraph 128 as they relate to Par, except that Par admits that, from time to time during the relevant time period, it submitted AWP's for particular products to one or more industry reporting services. Par is not required to respond to the allegations in Paragraph 128 that relate to other defendants.

129. Par denies the allegations in Paragraph 129 as they relate to Par. Par is not required to respond to the allegations in Paragraph 129 that relate to other defendants.

130. Par denies the allegations in Paragraph 130 as they relate to Par. Par is not required to respond to the allegations in Paragraph 130 that relate to other defendants.

COUNT TWO – FRAUDULENT SUPPRESSION

131. Par's responses to Paragraphs 1-130 are fully incorporated herein by reference.

140.¹ Par denies the allegations in Paragraph 140 as they relate to Par. Par is not required to respond to the allegations in Paragraph 140 that relate to other defendants.

¹ The Second Amended Complaint does not have paragraphs numbered 132-139. This Answer follows the paragraph numbers in the Second Amended Complaint.

141. Par denies the allegations in Paragraph 141 as they relate to Par. Par is not required to respond to the allegations in Paragraph 141 that relate to other defendants.

142. Par denies the allegations in Paragraph 142 as they relate to Par. Par is not required to respond to the allegations in Paragraph 142 that relate to other defendants.

COUNT THREE – WANTONNESS

143. Par's responses to Paragraphs 1-142 are fully incorporated herein by reference.

144. Par denies the allegations in Paragraph 144 as they relate to Par. Par is not required to respond to the allegations in Paragraph 144 that relate to other defendants.

145. Par denies the allegations in Paragraph 145 as they relate to Par. Par is not required to respond to the allegations in Paragraph 145 that relate to other defendants.

146. Par denies the allegations in Paragraph 146 as they relate to Par. Par is not required to respond to the allegations in Paragraph 146 that relate to other defendants.

147. Par denies the allegations in Paragraph 147 as they relate to Par. Par is not required to respond to the allegations in Paragraph 147 that relate to other defendants.

COUNT FOUR – UNJUST ENRICHMENT

148. Par's responses to Paragraphs 1-147 are fully incorporated herein by reference.

149. Par denies the allegations in Paragraph 149 as they relate to Par. Par is not required to respond to the allegations in Paragraph 149 that relate to other defendants.

150. Par denies the allegations in Paragraph 150 as they relate to Par. Par is not required to respond to the allegations in Paragraph 150 that relate to other defendants.

151. Par denies the allegations in Paragraph 151 as they relate to Par. Par is not required to respond to the allegations in Paragraph 151 that relate to other defendants.

152. Par denies the allegations in Paragraph 152 as they relate to Par. Par is not required to respond to the allegations in Paragraph 152 that relate to other defendants.

PRAYER FOR RELIEF

Par is not required to respond to Plaintiff's Prayer for Relief. To the extent a response is required, Par denies the allegations set forth in Plaintiff's Prayer for Relief as they relate to Par, and denies that Plaintiff is entitled to any of the relief requested therein, or to any relief whatsoever, from Par. Par is not required to respond to the Prayer for Relief's allegations that relate to other defendants.

* * *

Par denies all allegations in the Complaint (including headings) not specifically admitted above.

* * *

Par sets forth the following affirmative and other defenses. Par does not intend hereby to assume the burden of proof with respect to those matters as to which, pursuant to law, Plaintiff bears the burden. Par reserves the right to assert in the future such other and further defenses as may become available or apparent during pretrial proceedings.

FIRST DEFENSE

Plaintiff fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiff's claims are barred by the doctrines of unclean hands, estoppel, ratification, and waiver.

THIRD DEFENSE

Plaintiff's claims are barred because of the failure to join indispensable parties.

FOURTH DEFENSE

Plaintiff's claims are barred in whole or in part by the defense of laches.

FIFTH DEFENSE

Plaintiff's claims are barred by the failure to exhaust applicable administrative remedies.

SIXTH DEFENSE

Plaintiff's claims are barred in whole or in part by applicable statute(s) of limitations.

SEVENTH DEFENSE

Plaintiff's claims are barred by the failure to mitigate damages.

EIGHTH DEFENSE

Plaintiff's claims are barred in whole or in part by the failure to comply with applicable statutes and regulations.

NINTH DEFENSE

Plaintiff's claims are preempted in whole or in part by federal law.

TENTH DEFENSE

Plaintiff's claims are barred because they require resolution of a nonjusticiable controversy.

ELEVENTH DEFENSE

Plaintiff fails to plead fraud with specificity pursuant to Rule 9(b) of the Alabama Rules of Civil Procedure.

TWELFTH DEFENSE

Plaintiff fails to allege facts sufficient to invoke the savings provision of Alabama Code § 6-2-3.

THIRTEENTH DEFENSE

The imposition of punitive damages violates the excessive fines provisions, and Due Process and Equal Protection Clauses of the United States Constitution and of the Alabama Constitution of 1901.

FOURTEENTH DEFENSE

Par pleads all procedural and substantive limitations to the imposition of punitive damages, including but not limited to, the statutory caps applicable thereto.

FIFTEENTH DEFENSE

Plaintiff's claims are barred in whole or in part because the amounts claimed as damages were voluntary payments by the State.

SIXTEENTH DEFENSE

Plaintiff's claims are barred in whole or in part because the State cannot retroactively revive claims barred by an applicable statute of limitations.

SEVENTEENTH DEFENSE

Par incorporates, by reference, any applicable defense pleaded by any other defendant not otherwise expressly set forth herein.

EIGHTEENTH DEFENSE

Should Par be held liable to Plaintiff, which liability is specifically denied, Par is entitled to a set off in an amount to be determined by the trier of fact.

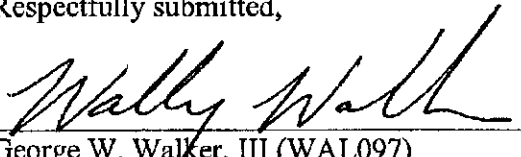
NINETEENTH DEFENSE

Par intends to rely upon any other and additional defense that is now or may become available or appear during, or as a result of, the discovery proceedings in this action or any developments in constitutional, statutory, administrative, regulatory, or decisional law, and hereby reserves its right to amend its Answer to assert such defense.

Of counsel:

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wally Walker", is written over a horizontal line.

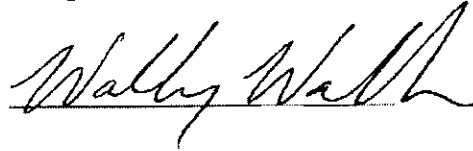
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Attorneys for Defendant
Par Pharmaceutical, Inc.

Dated: January 30, 2006

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2006, I caused a true and correct copy of the Answer of Par Pharmaceutical, Inc. to the Second Amended Complaint to be served on all counsel by electronic filing.

A handwritten signature in black ink, appearing to read "Wally Wall", is written over a horizontal line.